IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-647

FOOD HANDLERS LOCAL 425 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHERWORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,
Petitioner

VS.

VALMAC INDUSTRIES, INC.,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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OPINIONS BELOW, JURISDICTION AND STATUTORY PROVISIONS INVOLVED

The petition of Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcherworkmen of North America, AFL-CIO sets out the opinion below, the jurisdiction of this Court, and the statutory provisions involved. (Petition 1-2; Appendix to Petition A-12—A-21.)[1]

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[1] References to the opinion below will be directed to the Appendix to the Petition and will be cited as "App. pp. ——." References to the Petition will be cited as "Pet. pp. ——."

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming an injunction against a work stoppage pending arbitration of the underlying dispute where it concluded that: "(1) the dispute is arguably one which can be resolved by arbitration . . . (2) the dispute has not been excluded from the scope of the arbitration clause [of the governing collective bargaining agreement] . . ." and (3) the other, common law grounds enumerated in this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970), had been met.

COUNTERSTATEMENT OF THE CASE

A concise statement of the facts of the case and its procedural history appears in the opinion of the court below. (App. pp. A-13—A-15)

In petitioner's description of "The Proceedings Below" (Pet. p. 6), as well as its statement of the "Question Presented" (Pet. p. 2), petitioner implies that the Eighth Circuit decided that the work stoppage in question was not " 'over' a grievance which the parties were contractually bound to arbitrate." (Pet. p. 6). In fact the Court of Appeals held directly to the contrary:

> In this case the union contends there was no violation of the collective bargaining agreement because Article XV specifically permits employees to refuse to pass through a picket line authorized by the union. The company, on the other hand, contends that the no-strike provisions of the contract preclude the union from using picket lines to cause a work stoppage. Therein lies the heart of the dispute, and disputes arising under the collective bargaining agreement are subject to arbitration . . . It makes little sense to argue that because the work stoppage precipitated the dispute it was not a work stoppage "over" a grievance which the parties were contractually bound to arbitrate. (App. pp. A-18—A-19).

Petitioner's "Statement of the Case" also ignores the Eighth Circuit's instruction that the district court, on remand, order arbitration of the dispute, within ten days of the issuance of the mandate, and frame the issue for arbitration. (App. pp. A-20—A-21). The Court of Appeals specifically noted that the "only justification" for injunctive relief under this Court's decision in *Boys Markets* "is to suspend the work stoppage in order to permit the dispute to be resolved by means of arbitration." (App. p. A-20).

REASONS FOR DENYING THE WRIT

I. There is No Division of Authority Among the Courts of Appeals with Respect to the Issue Decided Below.

This Court has granted a petition for a writ of certiorari to the Second Circuit Court of Appeals in *Buffalo Forge Co.* v. *United Steelworkers of America*, No. 75-339.[2] *Buffalo Forge* presents the narrow issue of whether one union's honoring of a picket line established by another union may be enjoined under the principles set forth by this Court in the *Boys Markets* decision.[3] It is recognized that there is an apparently irreconcilable conflict among the Courts of Appeals over this issue. In such cases as *Buffalo Forge Co.* v. *United Steelworkers of America*, 517 F.2d 1207 (2d Cir. 1975), the Second, Fifth and Sixth Circuits[4] have held the District Courts

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[2] 44 U.S.L.W. 3238 (October 21, 1975).

[3] *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970).

[4] *See* cases cited at Pet. p. 11, fn. 7.

are powerless to enjoin such a work stoppage since it is not "over a grievance which both parties are contractually bound to arbitrate." [5]

In such cases as *Inland Steel Co.* v. *UMWA Local 1545*, 505 F.2d 293 (7th Cir. 1974), the Third, Fourth and Seventh Circuits [6] have held that the dispute created by a work stoppage in violation of a no-strike provision constituted in itself a sufficient "grievance which both parties are . . . bound to arbitrate," and accordingly affirmed the grant of injunctive relief. Thus, the question on which the Courts of Appeals are divided is whether a dispute over the interpretation of a no-strike clause, standing alone, will support a *Boys Markets* injunction pending arbitration.

However, the present case raises the different and more complex issue of whether the grant of injunctive relief was properly affirmed by the Court of Appeals below upon an express finding that (1) there existed an arbitrable dispute between petitioner and respondent over the scope and interaction of a no-strike clause [7] *and* an

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[5] *Boys Markets, supra,* 398 U.S. at 254.

[6] Island Creek Coal Co. v. UMWA, 507 F.2d 650 (3d Cir.), *cert. denied,* —— U.S. ——, 44 U.S.L.W. 3206 (Oct. 6, 1975); *Armco Steel Corp.* v. *UMWA*, 505 F.2d 1129 (4th Cir., 1974), *cert. denied,* —— U.S. ——, 44 U.S.L.W. 3206 (Oct. 6, 1975); Inland Steel Co. v. UMWA Local 1545, 505 F.2d 293 (7th Cir. 1974); Monongahela Power Co. v. I.B.E.W. Local 2332, 484 F.2d 1209 (4th Cir. 1973). *See also,* Bethlehem Mines Corp. v. UMWA, 375 F. Supp. 980 (W.D. Pa. 1974); Barnard College v. Transport Workers Union, 372 F. Supp. 211 (S.D.N.Y. 1974); General Cable Corp. v. I.B.E.W. Local 1798, 333 F. Supp. 331 (W.D. Tex. 1971).

[7] The collective bargaining agreement effective between petitioner and respondent at the time of the subject dispute contained, at Article XIV, the following language:

No Strike—No Lockout

During the whole period this Agreement is in effect, the Company shall not lock out its employees and the Union shall not authorize or sanction any strike, stoppage, slowdown or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this Agreement, and only then upon forty-eight (48) hours written notice to the other party, and the other party's continued failure to submit to arbitration.

authorized picket line clause [8] in the applicable collective bargaining agreement; and (2) the dispute had not been excluded from the scope of the arbitration clause in that agreement.[9] Accordingly, a decision of this Court affirming the *Buffalo Forge* case would not be dispositive of the present case.

Further, there is no conflict among the decisions of those Courts of Appeals that have decided the issue raised by this case. None of the decisions cited by petitioner in support of its position involved the application or construction of an authorized picket line clause in a *Boys Markets* situation. In contrast, every Court of Appeals [10] that has decided the propriety of injunctive relief in a case such as this, where the applicable collective bargaining agreement did contain an authorized picket line provision, ruled that such relief is proper

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[8] The collective bargaining agreement also contained, at Article XV, the following provision:

Authorized Picket Line

It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union.

[9] The collective bargaining agreement also contained in Article V a detailed, four-step arbitration process for resolving any grievance complaints *of the union or the company* "involving an interpretation, application or violation of this Agreement . . . ."

[10] Valmac Industries, Inc. v. Food Handlers Local 425, 519 F.2d 263 (8th Cir. 1975); NAPA-Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d 321 (3d Cir.), *cert. denied,* 419 U.S. 1049 (1974); Wilmington Shipping Co. v. Int'l. Longshoremen's Assoc., —— F.2d ——, 86 LRRM 2846 (4th Cir.), *cert. denied,* 419 U.S. 1022 (1974); Pilot Freight Carriers, Inc. v. Teamsters Local 391, 497 F.2d 311 (4th Cir.), *cert. denied,* 419 U.S. 869 (1974).

under *Boys Markets*. As noted by the Third Circuit Court of Appeals, the opinions cited by petitioner in support of its position

> . . . *are clearly distinguishable. In none of the cited cases was there a contractual provision restricting the union's right to honor picket lines of other labor organizations.* Indeed, the district court in the *Simplex* case, *supra*, [*Simplex Wire & Cable Co.* v. *I.B.E.W. Local 1644*, 314 F. Supp. 885 (D.N.H. 1970)] specifically noted the omission of any reference to the subject in the contract between the parties in that case.[11]

Similarly, in *Pilot Freight Carriers, Inc.* v. *Teamsters Local 391*,[12] on facts remarkably similar to those in the present case, the Fourth Circuit Court of Appeals based its affirmance of the grant of injunctive relief on the following grounds:

> The relationship between the no strike clause and the clause allowing individual employees to refuse crossing a primary picket line was, we think, an arbitrable matter, as is Pilot's contention about the underlying dispute, whether the local union or national union had directed or influenced concerted activity not to cross the picket line, as opposed to individual employees' decisions not to cross it . . . . *We think the parties intended to submit disputes of this nature to arbitration, and, in any event, we must construe the agreement liberally in favor of arbitration.*[13]

It is submitted that, whatever the validity of the *Buffalo Forge* line of cases, petitioner and respondents have

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[11] NAPA-Pittsburgh, Inc., *supra*, 502 F.2d 321 at 324. [Emphasis added.]

[12] 497 F.2d 311 (4th Cir.), *cert. denied*, 419 U.S. 869 (1974).

[13] 497 F.2d 311 at 313 [Emphasis added].

provided in their collective bargaining agreement that the present dispute is to be resolved by arbitration. Such an intent is consistent with the congressional policy in favor of arbitration recognized by this Court in the *Steelworkers Trilogy*,[14] and the "presumption of arbitrability" applied by this Court in *Gateway Coal Co.* v. *United Mine Workers*.[15] Since the subject matter of the dispute between petitioner and respondent is dealt with by the language of the Agreement itself, it follows that such dispute must be resolved by the dispute procedures provided by the Agreement for that express purpose.

Accordingly, since all Courts of Appeals that have dealt with the issues presented by this case are in agreement concerning the propriety of granting injunctive relief under *Boys Markets*, there is no "unalterable conflict" among the circuits, and the petition for certiorari presents no issue which warrants further review by this Court.

II. The Court Below Correctly Construed and Applied Federal Labor Policy in Accordance with this Court's Holding in Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970).

Respondent adopts and affirms herein the argument of the petitioner, Buffalo Forge Co., set forth in its Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit in *Buffalo Forge Co.* v. *United Steelworkers of America*, No. 75-339, at pages 7-12, which petition was granted by this Court.[16]

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[14] United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

[15] 414 U.S. 368, 379 (1974).

[16] 44 U.S.L.W. 3238, (October 21, 1975).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Court should deny the petition for a writ of certiorari. In the alternative, if this Court should feel that the decision of the Court of Appeals below in this case is in irreconcilable conflict with the decisions of other Courts of Appeals, it is requested that this Court hold the petition in abeyance pending the decision of the Court in the *Buffalo Forge* case presently before the Court.

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